

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

<b>GINO ROMANO</b>	)	
<b>d/b/a MICHAEL SCOTT PESCE</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>CIV-09-296-HE</b>
	)	
<b>BERNARD MADOFF</b>	)	
<b>a/k/a BERNIE MADOFF,</b>	)	
	)	
<b>Defendant.</b>	)	

**REPORT AND RECOMMENDATION**

Plaintiff, a federal prisoner appearing pro se, has filed a motion for a temporary restraining order and preliminary injunction. United States District Judge Joe Heaton has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

Plaintiff initiated this action in the United States District Court for the Middle District of Florida by filing a motion for a temporary restraining order and preliminary injunction. That Court transferred the motion to this Court because Plaintiff is currently confined at the Federal Transfer Center in Oklahoma City. Doc. No. 3, 4. The case docket does not indicate that Plaintiff's motion for a temporary restraining order has been served upon Defendant.

The Federal Rules of Civil Procedure provide that an action "is commenced by filing a complaint with the court," Fed. R. Civ. P. 3, and allow district courts to issue temporary restraining orders based upon "specific facts in an affidavit or verified complaint . . . ." Fed. R. Civ. P. 65(b). This Court lacks jurisdiction to grant preliminary injunctive relief since no

complaint has been filed. Powell v. Rios, No. 06-1289, 241 Fed. Appx. 500, 505 n.4 (10th Cir. July 19, 2007) (“Absent a properly-filed complaint, a court lacks power to issue preliminary injunctive relief.”).<sup>1</sup> Accordingly, the Court lacks jurisdiction to consider Plaintiff’s request for a temporary restraining order.

**RECOMMENDATION**

**IT IS THEREFORE** recommended that the Plaintiff’s “Temporary Restraining Order, TRO and Preliminary Injunction” be dismissed upon filing as no complaint has been filed and thus, the Court lacks jurisdiction. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by April 15, 2009, in accordance with 28 U.S.C. § 636 and Local Civil Rule 72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives the right to appellate review of both factual and legal questions contained herein. Moore v. United States, 950 F.2d 656 (10th Cir. 1991). This Report and Recommendation disposes of all the issues referred to the undersigned Magistrate Judge in the captioned matter.

**ENTERED this 26<sup>th</sup> day of March, 2009.**

  
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**DOYLE W. ARGO**  
**UNITED STATES MAGISTRATE JUDGE**

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<sup>1</sup> This unpublished disposition is cited as persuasive authority pursuant to Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.